

## Elder Financial Abuse

### How to Recognize Financial Abuse

#### 1. Transaction Abuse Indicators

- Investments in unsuitable financial products, time shares, or real property
- Larger than necessary loans against home equity to finance investments
- Inappropriate banking activity such as unusually large withdrawals or withdrawals from automated banking machines
- Signatures on checks that do not resemble the elder's signature
- Legal documents signed when the elder is physically incapable of writing
- Checks written out to "cash" being negotiated by caretakers
- Checks signed by the senior but filled out by someone else
- A surge of activity in accounts which have been static for years
- Expensive gifts made by the elder
- Checks or credit card transactions made out to direct mail or telemarketing promotions
- Contributions going to newly formed religious or non-profit causes
- Correspondence indicating the elder has won or will soon win a prize
- Threatening correspondence purporting to be from the IRS or a government agency demanding immediate payment under the threat of being arrested for non-compliance

#### 2. Legal Document Abuse Indicators

- Power of attorney documents signed by the elder when the elder lacks mental capacity
- A Will being made when the elder is not mentally competent or an elder taking his or her name off of property titles
- The elder adding the name of a caretaker onto real property or money accounts in exchange for commitments of continued care, and or affection
- The elder makes hurried changes to a Will, Trust or Transfer on Death Deed

#### 3. Life-Style Change Indicators

- Lack of personal grooming items or appropriate clothing, when the elder can well afford it
- Under-deployment of the elder's existing resources that could be spent on housing, personal care and maintenance
- Missing cash, jewelry and personal belongings
- Decline in personal hygiene
- Unexpected change in daily routines

#### **4. Personal Relationship Abuse Indicators**

- Family member interest in “conserving” the money that needs to be spent for of the elder’s care
- Reluctance or refusal by “responsible party” to spend money on the elder’s care
- New acquaintances or long-lost relatives spending time and expressing affection for the elder
- A caretaker with an inappropriate level of interest in the elder’s financial matters

#### **5. Undue Influence**

- California Welfare and Institutions Code section 15610.70(a) defines undue influence generally as “excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity.”

##### **Factors that determine undue influence:**

- The victim’s vulnerability, evidence of which may include incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation or dependency, and whether the influencer knew or should have known of the alleged victim’s vulnerability.
- The influencer’s apparent authority, evidence of which may include status as a fiduciary, family member, care provider, healthcare professional, legal professional, spiritual advisor, expert, or other qualification.
- The influencer’s conduct, evidence of which may include (a) Controlling necessities of life, medication, the victim’s interactions with others, access to information, or sleep; (b) Use of affection, intimidation, or coercion; (c) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.
- The equity of the result. Evidence may include the economic consequences to the victim, any divergence from the victim’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

#### **Warnings to Elders about How to Avoid Financial Abuse**

When it comes to your finances, deal only with people you have known a long time and with companies or organizations with proven track records. Get everything in writing! Never accept a verbal promise or assurance if money or property is involved. Rarely will you benefit from mistakes or misunderstandings. Don’t sign anything without carefully reading it and never feel pressured to sign before you are absolutely ready to live with your decision. Honor the “three day rule” by waiting before you sign any contract. The longer you wait, the better. Take your time! Remember, it took a lifetime of work and sacrifice to build up your estate and you can lose it all with one stroke of a pen. (Refer to CANHR’s Fact Sheet - Preventing Elder Financial Abuse.)

## **What to Do About Known or Suspected Elder Financial Abuse?**

REPORT IT!

### **Who Reports?**

Any concerned person, and all mandated reporters.

### **Who are Mandated Reporters?**

Any person who has responsibility for the care or custody of an elder, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff or a public or private facility that provides care or services for elders; any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency. Officers and employees of financial institutions are also mandated reporters.

### **What is Reported?**

Mandated reporters **MUST** report actual or suspected financial abuse, which is observed, evident, or described.

### **When to Report?**

Immediately or as soon as possible by telephone, followed by a written report within two (2) working days.

### **Written Reports:**

Form SOC 341 must be completed and signed by the mandated reporter.

### **Failure to Report**

Failure to report, impeding or inhibiting a report financial abuse of an elder is a misdemeanor, punishable by six months in the county jail and a fine of one thousand dollars (\$1,000).

Any mandated reporter who willfully fails to report financial abuse of an elder where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail and a fine of five thousand dollars (\$5,000).

Banks and financial institutions are mandated reporters under Welfare and Institution Code §15630.1. Failure to report can lead to a \$1,000 fine. Intentional failure to report can result in a \$5,000 fine. There is no imprisonment or private right of actions against institution that fail to report financial abuse.

### **Where to Report**

#### **Elder Scams**

Contact the county office of the District Attorney - check the California District Attorney's Association for current addresses and phone numbers at 916-443-2017 or <http://www.cdaa.org>.

## **Commercial Financial Abuse Complaints**

When elders have been abused by individuals who hold licenses to do business within the State of California complaints should be made to the appropriate licensing entity. Below is information on how to contact the appropriate licensing entity.

### **Financial Services**

Accountant - Board of Accountancy (916) 263-3680

Banks (National) - Office of the Comptroller of the Currency (800) 613-6743

Banks (State) - Department of Business Oversight (866) 275-2677

Credit Union (National) - National Credit Union Administration (800) 755-1030

Credit Union (State) - Department of Business Oversight (866) 275-2677

Federal Savings - (National) Office of the Comptroller of the Currency (800) 613-6743

Investment/Financial Advisor Dept. of Business Oversight (866) 275-2677

Mortgage Servicer (non-bank) Department of Business Oversight (866) 275-2677

Payday Lender - Department of Business Oversight (866) 275-2677

Precious Metal Investment - U.S. Commodity Futures Trading Commission (866) 366-2382

Property/Bill Payer - Dept. of Business Oversight (866) 275-2677

Stock/Securities Investment - Dept. of Business Oversight (866) 275-2677

Unclaimed Property - California State Controller (800) 992-4647

### **Real Estate**

Contractor - Contractors State License Board (800) 321-2752

Land Sell - Bureau of Real Estate (877) 373-4542

Mobile Home Park/Sales - Dept. Of Housing and Community Development (800) 952-5275

Motor Home/RV Dealer - Motor Vehicle Board (916) 445-1888

Prepaid Rental Listing Services - Department of Consumer Affairs (800) 952-5210

Real Estate Appraiser - Bureau of Real Estate Appraisers (916) 552-9000

Real Estate Broker/Corporation - Bureau of Real Estate (877) 373-4542

Registered Appraisal Management Companies - Dept. of Consumer Affairs (800) 952-5210

Timeshare - Bureau of Real Estate (877) 373-4542

Title Company - California State Controller (800) 992-464 7

### **Legal Services**

Attorneys - California State Bar (800) 843-9053

Notary Public - Secretary of State, Notary Public Section (916) 653-3595

Professional Fiduciaries - Dept. of Consumer Affairs (800) 952-5210

### **Products**

Auto Dealer - Department of Motor Vehicles (916) 574-7220

Automotive Repair and Smog Check Bureau of Automotive Repair (800) 952-5210

Funeral/Cemetery Services - Cemetery and Funeral Board (916) 574-7870

Hearing Aid Dispenser - Dept. of Consumer Affairs (800) 952-5210

Insurance Company/Agent Broker - Department of Insurance (800) 927-4357

Thermal Insulation - Dept. of Consumer Affairs - (916) 999-2041